IN THE IOWA DISTRICT COURT FOR JOHNSON COUNTY

STATE OF IOWA, Plaintiff, vs. JASON BESLER, Defendant.	))))))))	No. CVCV080344 MOTION TO RECONSIDER, AMEND AND ENLARGE THE COURT'S RULING

COMES NOW Plaintiff State of Iowa, through Gary Dickey Jr., and pursuant to Iowa Rule of Civil Procedure 1.904(2), moves the Court to reconsider, amend, and enlarge its ruling on the Application for Leave to File Petition for Writ of Quo Warranto. In support of the motion, Plaintiff states:

PROCEDURAL HISTORY

1. On November 11, 2018, the State of Iowa filed an Application for Leave to File a Petition for Writ of Quo Warranto pursuant to Iowa Rule of Civil Procedure 1.1302(2).

2. Jason Besler resisted the application on the ground that the relator brining the action in the name of the state, Gary Dickey, Jr., lacked standing.

3. The Court held a hearing on the application on February 18, 2019.

4. On April 24, 2019, the Court issued its ruling denying the Application.

STANDARD OF REVIEW

Iowa R. Civ. P. 1.904(3) "permits the court to enlarge or amend its findings and conclusions and to modify or substitute the judgment or decree." *In re Marriage of Okland*, 699 N.W.2d 260, 263-64 (Iowa 2005). A party has 15 days in which to file this motion. Accordingly, this motion is timely.

ARGUMENT

I. THE COURT SHOULD RECONSIDER AND AMEND ITS RULING BECAUSE IT COMMITTED CLEAR ERROR BY DECIDING THE LEGAL MERITS OF THE DISPUTE

The Court committed clear error by reaching the legal merits of the underlying dispute rather than deciding the limited question before it—whether Dickey should be granted leave to file a petition. Over a century ago, the Iowa Supreme Court explained the legal standard for granting leave under the predecessor quo warranto statute:

> Section 4316 of the Code, relating to quo warranto proceedings, reads as follows: "Sec. 4316. By Private Persons. If the county attorney, on demand, neglects or refuses to commence the same, any citizen of the state having an interest in the question may apply to the court in which the action is to be commenced, or to the judge thereof, for leave to do so, and, upon obtaining such leave may bring and prosecute the action to final judgment." *It is admitted that the county attorney refused to bring the action, and the only question for decision on this branch of the case is, has the relator such an interest in the question as that he may apply to the court for leave to do so?* We think he has such interest.

State v. Barker, 116 Iowa 96, 99, 89 N.W. 204, 205 (1902) (emphasis added). The court made clear that a request for leave to file a petition for quo warranto is a preliminary question that does not involve an adjudication of the merits:

> The granting of leave does no more than designate the relator as a person who may lawfully call the defendants into court for the trial of a disputed question of law or fact according to the ordinary course of procedure. *It adjudicates nothing* against the defendants.

State ex rel. Fullerton v. Des Moines City Ry. Co., 135 Iowa 694, 715, 109 N.W. 867, 875 (1906) (emphasis added). This Court lost sight of these core principles of procedure governing quo warranto actions.

II. THE COURT SHOULD RECONSIDER AND AMEND ITS RULING BECAUSE IT IMPROPERLY RESOLVED FACTUAL DISPUTES AND LEGAL QUESTIONS WITHOUT GIVING DICKEY DUE PROCESS

The Court false starts out of the blocks by finding that "[t]he essential facts are not disputed." (04/23/19 Ruling at 1). This is incorrect. Dickey does not accept any factual assertions offered by Besler's supporting documentation. Specifically, Dickey does not accept a face value the claim that Governor Reynolds communicated her appointment to her chief of staff. Nor does he agree that the failure to communicate the purported appointment was attributable to oversight. If that were true, it would constitute gross managerial incompetence. And, Ryan Koopmans is not incompetent, let alone grossly incompetent. In short, there is no basis for the Court to conclude that the essential facts are not disputed.

The Court compounds its initial error by faulting Dickey for offering any supporting affidavits or requesting "defendant's affiant appear at the hearing so that he could be cross-examined." (04/23/19 Ruling at 1). Similarly, the Court criticizes Dickey for failing to "cite any binding legal authority supporting" his claim that Besler is holding office unlawfully.[1] Of course, the reason Dickey did not call Koopmans or brief the legal merits of his underlying claim is because neither matter was before the Court. Nor do they come before the Court until after leave is granted, a petition is filed, the defendant answers, and discovery is concluded.

[1] It is worth noting that Dickey did cite the text of Article V, Section 15 of the Iowa Constitution with which Governor Reynolds failed to comply. Not only is the Iowa Constitution binding, it is the "supreme law of the land." *McNabb v. Osmundson*, 315 N.W.2d 9, 13 (Iowa 1982).

III. THE COURT SHOULD ENLARGE ITS RULING TO FIND THAT DICKEY HAS SUFFICIENT INTEREST TO PROCEED AS RELATOR ON BEHALF OF THE STATE OF IOWA

At a minimum, the Court must enlarge its ruling to decide the preliminary question of whether Dickey should be granted leave to proceed as relator on behalf of the State of Iowa. All that Dickey must show is that the county attorney has declined prosecution and that he is a citizen of Iowa. Neither fact is in dispute.

Contrary to Besler's contention, prior decisions of the Iowa Supreme Court make clear that Dickey need not show any special interest to proceed as relator:

> Rule 300(a) authorizes the Governor, General Assembly and certain courts to direct that the action be brought. Otherwise, the proper county attorney may bring the action in his discretion. Although the Attorney General has certain supervisory powers over county attorneys, the rule does not empower him to direct a county attorney to bring an action in quo warranto. If, on demand, the county attorney fails to bring action, the Attorney General may do so. *Any citizen of the state is qualified to make the demand. No private interest in the question is required.*

State v. Winneshiek Co-op. Burial Ass'n, 234 Iowa 1196, 1197-98, 15 N.W.2d 367, 368 (1944) (emphasis added). The legislative history of the quo warranto statute contradicts Besler's view. As explained in *Fullerton*, the statute previously provided that "any citizen of the State *having an interest in the question* may apply to the court in which the action is commenced for leave to" proceedings in the nature of quo warranto." *Fullerton*, 135 Iowa at 703, 109 N.W. at 871 (citing Iowa Code section 4316)(emphasis added). When the quo warranto procedure was transferred to the Iowa Rules of Civil Procedure, the requirement that the relator have "an interest in the question" was removed. *Winneshiek Co-op. Burial Ass'n*, 234 Iowa at 1197-98, 15 N.W.2d at 368 (citing Iowa R. Civ. P. 300). Indeed, the position that Besler takes in this case—that Dickey must show some personal interest in the outcome of the litigation—is the dissenting position in *Winneshiek Co-op Burial Ass'n*. *Id.* at 1216, 15 N.W.2d at 377 (Bliss, J., dissenting) ("if it may be said that Rule 300(b) is

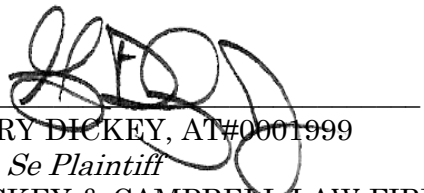
valid and enforceable, then the term 'any citizen of the state' should be held to mean a citizen 'having an interest in the question involved'").

The Iowa Supreme Court's decision in *State ex rel. Adams v. Murray*, 217 Iowa 1091, 252 N.W. 556 (Iowa 1934), is a case in point. In *Adams*, the relator demanded that the county attorney of Harrison County file an action to determined who had the right to hold the office of judge following the death of Honorable J.S. Dewell. *Id.* The only qualification identified that allowed Adams to bring the petition was that he "was a citizen of the state of Iowa and a resident of the Fifteenth judicial district." *Id.* The Court specifically clarified that under the quo warranto statute, "any other citizen" also could have brought a quo warranto action to challenge Judge Dewell's successor. *Id.* 252 N.W. at 558 ("Had the said Roy E. Adams *or any other citizen* desired, under the statute in this state, he could have asked leave of court to have also commenced his action against Judge John P. Tinley Sr.") (emphasis added). From *Adams*, it follows a fortiori that Dickey is entitled to leave to bring his petition for quo warranto in this matter.

CONCLUSION

This Court committed clear error by deciding the legal merits of the underlying dispute—which was not before it. At the same time, the Court committed clear error by refusing to grant Dickey leave to file the petition for quo warranto. Accordingly, the Court should reconsider its ruling. In the very least, the Court should enlarge its findings to address whether Dickey is entitled to leave under Rule 1.1302.

DATED this 25th day of April 2019.



GARY DICKEY, AT#0001999
Pro Se Plaintiff
DICKEY & CAMPBELL LAW FIRM, PLC
301 E. Walnut Street, Suite 1
Des Moines, Iowa 50309
Tel: 515.288.5008 Fax: 515.288.5010
gary@dickeycampbell.com